

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
3 DIVISION

ASHLAND INC.

and

HERCULES INCORPORATED,

Plaintiffs,

v.

NATIONAL INDEMNITY COMPANY

Serve: J. Michael Gottschalk
c/o Kentucky Secretary of State
3333 Farnam Street, Suite 50
Omaha, NE 68131

and

RESOLUTE MANAGEMENT INC.,

Serve: Corporation Service Corporation
c/o Kentucky Secretary of State
2711 Centerville Rd.
Suite 400
Wilmington, DE 19808

Defendants.

Civil Action No. 12 CE 4038

COMPLAINT

A True Copy

ATTEST: WILMA F. LYNCH, CLERK

FAYETTE CIRCUIT COURT

By: Dean Deputy

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs, Ashland Inc. ("Ashland") and Hercules Incorporated ("Hercules"), for their
Complaint against Defendants, National Indemnity Company ("NICO") and Resolute
Management Inc. ("Resolute"), state as follows:

NATURE OF THE ACTION

1. This action arises out of Defendants' tortious interference with Plaintiffs' contractual rights to payment from certain of Plaintiffs' insurers. In recent years, Defendants have been pursuing an unlawful scheme designed to deprive Plaintiffs of the benefits of insurance coverage agreements with their insurers. Specifically, under the guise of acting as a traditional "reinsurer," Defendants have interjected themselves into the contractual relationships between Plaintiffs and certain of their insurers (i.e., the AIG Companies and Underwriters at Lloyd's, London), and Defendants have caused those insurers to improperly deny payment of insurance monies due and owing to Plaintiffs. Specifically, Defendants have directed, and continue to direct, those insurers to reduce and delay claims payments that the insurers had otherwise reserved to pay to Plaintiffs so that Defendants can instead use those payment dollars for their own profit-making purposes. The so-called "reinsurance" arrangements, under which Defendants are inducing the insurers to breach their insurance contracts with Plaintiffs, are not traditional reinsurance arrangements at all. Rather, they are a financial vehicle under which Defendants enrich themselves (and their parent company, Berkshire Hathaway) by taking and using insurance monies otherwise scheduled to be paid to Plaintiffs -- in utter disregard for the rights and interests of Plaintiffs. The above-described tortious conduct by Defendants has caused substantial injury and damages to Plaintiffs. Accordingly, by this Complaint, Plaintiffs seek an award against Defendants of compensatory and consequential damages, interest, attorneys' fees, costs and expenses, and punitive damages.

PARTIES

2. Plaintiff, Ashland, is a corporation created and existing under the laws of Kentucky, with its principal place of business in Kentucky, and with offices in Lexington,

Kentucky. Ashland is a specialty chemical company, which employs approximately 750 people in the Lexington, Kentucky area. Among other things, Ashland's Insurance Claims Department is located in Lexington, which is the location from which the insurance billings at issue are sent to the insurers by Ashland, and the location at which such insurance payments are received.

3. Plaintiff, Hercules, is a Delaware corporation, with its principal place of business in Delaware. Hercules is a wholly owned subsidiary of Ashland.

4. Upon information and belief, Defendant, NICO, is a Nebraska corporation, with its principal place of business at 3024 Harney Street, Omaha, Nebraska 68131.

5. Upon information and belief, Defendant, Resolute, is a Delaware corporation, with its principal place of business at 3024 Harney Street, Omaha, Nebraska 68131.

6. NICO and Resolute are sister companies that are owned by a common ultimate parent company, Berkshire Hathaway Inc.

JURISDICTION AND VENUE

7. This Court has jurisdiction over each of the above-described Defendants because among other things, Defendants have transacted business in this Commonwealth, contracted to supply services or goods in this Commonwealth and/or caused tortious injury by an act or omission in this Commonwealth. This Court has jurisdiction over this matter because the amount in controversy exceeds the minimum jurisdictional requirements of the Court.

8. Venue is proper in this Court, pursuant to Ky. Rev. Stat. § 454.210(4), because, among other things, Plaintiff Ashland resides in Fayette County, Kentucky, and/or the cause of action arose in whole or in part in Fayette County, Kentucky.

FACTUAL BACKGROUND

Underlying Asbestos-Related Claims

9. For many years, Ashland has been the subject of claims and lawsuits based on allegations that various claimants were exposed to asbestos-containing products that were manufactured, sold, handled, or distributed by Ashland's former subsidiary, Riley Stoker Corporation (the "Riley Stoker Asbestos Claims").

10. For many years, Hercules has been the subject of claims and lawsuits based on allegations that various claimants were exposed to asbestos-containing products that were manufactured, sold, handled, or distributed by a former subsidiary of Hercules (the "Hercules Asbestos Claims").

Insurance Policies and Settlement Agreements

11. Various insurers issued historical liability insurance policies to Ashland and Riley Stoker Corporation ("Riley Stoker") over a span of many decades, which policies provide coverage for Riley Stoker Asbestos Claims. In addition, various insurers issued historical liability policies to Hercules over a span of many decades, which policies provide coverage for Hercules Asbestos Claims. For many years, Ashland has tendered the Riley Stoker Asbestos Claims, and Hercules has tendered the Hercules Asbestos Claims, to their respective insurers seeking coverage for those claims under the historical excess liability policies that those insurers had issued. These historical policies provide indemnity for liability claims such that Ashland and Hercules would pay the costs of defense and settlement of claims in the first instance, and the insurers would then provide reimbursement of those costs. Among the historical excess insurers from which Ashland and Hercules sought indemnity are members of the AIG (also known as "Chartis") group of insurance companies (collectively, "AIG Companies") and Certain

Underwriters at Lloyd's, London ("Lloyd's Underwriters"), as well as various London Market Insurance Companies.

12. In connection with Ashland's tender of Riley Stoker Asbestos Claims to Lloyd's Underwriters for coverage, in or about 1998, Ashland entered into a coverage-in-place settlement agreement with Lloyd's Underwriters (hereinafter, the "1998 Ashland/Lloyd's Agreement"). The 1998 Ashland/Lloyd's Agreement established the manner in which Lloyd's Underwriters would provide insurance coverage for Riley Stoker Asbestos Claims under the Lloyd's policies that were the subject of that agreement. (Various London Market Insurance Companies also were parties to the 1998 Ashland/Lloyd's Agreement because they co-insured many of the Lloyd's policies with their own corresponding London Companies policies.)

13. Among its terms, the 1998 Ashland/Lloyd's Agreement provides that neither the agreement, nor any of the rights or benefits thereunder, may be assigned by any party without the written consent of the other parties.

14. Following the execution of the 1998 Ashland/Lloyd's Agreement, and prior to the tortious interference with that agreement by Defendants, Lloyd's Underwriters were making coverage payments to Ashland in response to the quarterly invoices that were sent to them by Ashland pursuant to the terms of the agreement.

15. In connection with Ashland's tender of Riley Stoker Asbestos Claims to the AIG Companies and other domestic insurers, in or about 2003, Ashland entered into a coverage-in-place settlement agreement with a group of domestic insurers, including American Home Insurance Company ("American Home"), which is one of the AIG Companies (the "2003 Ashland/AIG Agreement"). The 2003 Ashland/AIG Agreement established the manner in which

American Home and the other signatory insurers would provide insurance coverage to Ashland for Riley Stoker Asbestos Claims.

16. The 2003 Ashland/AIG Agreement was amended by the parties in or about 2008 to add as parties other members of the AIG group of insurance companies participating in Ashland's historical liability insurance program, including but not limited to, Granite State Insurance Company, Lexington Insurance Company, National Union Fire Insurance Company of Pittsburgh, Pa. ("National Union"), and AIU Insurance Company.

17. The 2003 Ashland/AIG Agreement provides that neither it, nor any of the rights or benefits thereunder, may be assigned by any party without the prior written consent of the other parties.

18. Following the execution of the 2003 Ashland/AIG Agreement, and prior to the tortious interference by Defendants, the AIG Companies were making coverage payments to Ashland under that agreement in response to quarterly invoices that were sent to them by Ashland pursuant to the terms of the agreement.

19. In connection with Hercules' tender of Hercules Asbestos Claims to the AIG Companies and other domestic insurers, in or about 2004, Hercules and various of its insurers, including members of the AIG group of insurance companies, entered into a coverage-in-place settlement agreement (the "2004 Hercules/AIG Agreement"). The 2004 Hercules/AIG Agreement established the manner in which the signatory insurers, including the AIG Companies, would provide insurance coverage for Hercules Asbestos Claims.

20. The 2004 Hercules/AIG Agreement provides that the agreement may not be assigned in whole or in part to a third-party without the written consent of all parties thereto.

21. Following the execution of the 2004 Hercules/AIG Agreement, and prior to the tortious interference by Defendants, the AIG member company National Union received quarterly billings from Hercules and made payments in response thereto.

NICO's Transactions with Lloyd's Underwriters

22. Lloyd's of London (sometimes referred herein as "Lloyd's") is an institution located in London, England, which facilitates the buying and selling of insurance. Lloyd's of London traces its origins back more than 300 years, when individuals in the shipping industry underwrote the risk of loss of ships in transit at sea. Over the past century, insurance policies underwritten at Lloyd's have covered a wide variety of risks, including third-party liability claims against policyholders for bodily injury and/or property damage. For most of its existence -- including the periods at issue in this case -- the sellers of insurance policies at Lloyd's were natural persons, who grouped themselves together into unincorporated associations known as "Syndicates." At all relevant times, the Lloyd's policies at issue were subscribed to by multiple Syndicates, each of which was comprised of scores of natural-persons called "Underwriters," and who were also known as "Names." These Underwriters, or Names, agreed to bear the financial responsibility to pay coverage claims under their respective Lloyd's policies to the fullest extent of their personal wealth -- "down to their last cufflink," as the saying goes.

23. In the mid-1990s, the underwriting Syndicates at Lloyd's restructured themselves by, among other things, creating an entity called Equitas to reinsure and run-off the coverage obligations of historical Lloyd's policies issued for 1992-and-prior years, including the Lloyd's policies that provide coverage for Ashland's Riley Stoker Asbestos Claims.

24. Thereafter, when Ashland approached Lloyd's Underwriters for coverage of Riley Stoker Asbestos Claims, Ashland entered into negotiations with Equitas to reach agreement on the manner in which Lloyd's Underwriters would cover the Riley Stoker Asbestos Claims.

25. The negotiations between Ashland and Equitas culminated in April 1998, when Ashland and Lloyd's Underwriters (along with various London Market Companies) entered into the 1998 Ashland/Lloyd's Agreement, under which Lloyd's Underwriters agreed to pay a proportionate share of Ashland's Riley Stoker Asbestos Claims. Generally, under this agreement, which is commonly referred to as a "coverage-in-place agreement," coverage responsibility for Ashland's defense and/or settlement payments regarding any given Riley Stoker Asbestos Claim is allocated among all of the policy years of Lloyd's policies -- running from the 1950s to the mid 1980s. At the end of each quarterly (three month) period, Ashland calculated the amount allocated to each of the various Lloyd's policies and sent an invoice (along with supporting information) to Lloyd's Underwriters for reimbursement under those policies. Under this arrangement, Ashland would bill amounts to each Lloyd's policy on a quarterly basis, until the limits of coverage of that policy had been fully billed, at which point Ashland would begin to bill the next-higher-layer Lloyd's policy in the same policy year.

26. Subsequently, in 2007, NICO entered into a transaction with Lloyd's Underwriters and Equitas to further its business strategy of profiting by the manipulation of pre-existing insurance contracts so as to deprive policyholders of the benefits of those contracts. Specifically, pursuant to this transaction, NICO agreed to "retroactively reinsure" Lloyd's Underwriters' obligations under all 1992-and-prior Lloyd's policies (other than life insurance policies). Under this deal, Equitas and Lloyd's Underwriters agreed to hand over to NICO the entire \$8.7 billion in reserves that Equitas had maintained for payment of policyholder claims,

and, in exchange, NICO agreed to “reinsure” all Lloyd’s policyholder coverage liabilities, up to a total “reinsurance” limit of \$14.4 billion. Also, as part of this “retroactive reinsurance” deal, NICO took control of Lloyd’s Underwriters’ and Equitas’s claims-handling rights and obligations, including those under the 1998 Ashland/Lloyd’s Agreement. NICO then delegated claims-handling responsibility to its sister company, Resolute.

27. The regulatory guidance for accounting for “reinsurance” (which is found in chapter 22 of the NAIC Accounting Practices and Procedures Manual for Property and Casualty Insurance Companies) differentiates between, and specifies different accounting treatment for, “prospective” and “retroactive” reinsurance contracts (because of the potential abuses and financial engineering that can be carried out with “retroactive” reinsurance contracts). Reinsurance, in which an insurer assumes all or part of the risk undertaken originally by another insurer, is most commonly understood as “prospective” reinsurance. In these prospective reinsurance contracts, the reinsurer agrees to reimburse a ceding insurer for losses that may be incurred as a result of *future* insurable events covered under insurance contracts that are the subject of the reinsurance. Prospective reinsurance is an intrinsic part of the insurance industry, and it is the principle mechanism by which insurers spread the risks that they have underwritten. Retroactive reinsurance, by contrast, is fundamentally different from traditional, prospective reinsurance arrangements in that the retroactive reinsurer agrees to reimburse a ceding insurer for liabilities incurred as a result of *past* insurable events covered under the insurance contracts that are the subject of the reinsurance.

28. NICO’s 2007 transaction with Lloyd’s Underwriters and Equitas was not a traditional “prospective” reinsurance arrangement, but rather was a “retroactive” reinsurance agreement.

29. In 2009, Lloyd's Underwriters, Equitas, and NICO entered into a second stage of the transaction that had begun in 2007, the so-called "Part VII Transfer" transaction. This Part VII Transfer purported to transfer all coverage obligations of Lloyd's Underwriters under 1992--and--prior insurance policies to an entity controlled by Berkshire Hathaway. Lloyd's Underwriters contend that the effect of this Part VII Transfer is that, under English law, Lloyd's Underwriters are no longer liable for their 1992--and--prior insurance policies. Nonetheless, this Part VII Transfer has never been approved by an American court or other governmental body in the United States. Thus, upon information and belief, Lloyd's Underwriters acknowledge that they are still directly obligated, in the first instance, to pay coverage to American policyholders under pre-1993 Lloyd's policies. After this Part VII Transfer transaction, NICO continued to control the claims-handling rights and obligations of Lloyd's Underwriters and Equitas, including those under the 1998 Ashland/Lloyd's Agreement, with NICO delegating those rights and responsibilities to Resolute.

30. Ashland was not asked to, and did not, consent to the purported Part VII Transfer to NICO or Resolute of any rights or duties of Lloyd's Underwriters provided under the 1998 Ashland/Lloyd's Agreement, nor those provided under the Lloyd's insurance policies that are subject to the 1998 Ashland/Lloyd's Agreement. Accordingly, there has not been an effective assignment of such rights or duties to NICO or to Resolute. Nonetheless, Resolute, acting under the direction of NICO, has been controlling the exercise of rights and duties of Lloyd's Underwriters under the 1998 Ashland/Lloyd's Agreement and/or the underlying Lloyd's policies, and is now directly interfering with Lloyd's Underwriters' satisfaction of their obligations under that agreement.

NICO's Transaction with The AIG Companies

31. In 2011, the AIG Companies (also known as "Chartis Companies") entered into an agreement with NICO relating to the bulk of the AIG Companies' asbestos coverage liabilities that was characterized as a "retroactive reinsurance" arrangement by a Chartis Press Release dated April 20, 2011.

32. Under that agreement, the AIG Companies paid NICO approximately \$1.65 billion and gave NICO access to the AIG Companies' reserves for a certain portfolio of the AIG Companies' asbestos coverage claims in exchange for NICO agreeing to provide \$3.5 billion in limits of so-called "reinsurance" to respond to these asbestos coverage claims. Again, this transaction was not a traditional "prospective" reinsurance contract, but rather was "retroactive" reinsurance.

33. Also under that agreement, NICO insisted upon taking control of claims-handling decisions regarding the AIG Companies' asbestos liabilities that were the subject of retroactive reinsurance. NICO then delegated that claims-handling control to its sister company, Resolute. This claims-handling control that was taken over by NICO and delegated to Resolute under this agreement included control over the rights and duties of the AIG Companies set forth under the 2003 Ashland/AIG Agreement, as well as those set forth under the 2004 Hercules/AIG Agreement.

34. Ashland was never asked to, and did not, consent to the transfer to NICO or Resolute of any rights or duties of the AIG Companies under the 2003 Ashland/AIG Agreement, nor under any insurance policies that are subject to the 2003 Ashland/AIG Agreement. Accordingly, there has not been an effective assignment of such rights or duties to NICO or to Resolute. Nonetheless, Resolute, acting under the direction of NICO, has been controlling the

exercise of rights and duties of the AIG Companies under the 2003 Ashland/AIG Agreement and/or the underlying AIG Companies' policies, and is now directly interfering with the AIG Companies' satisfaction of their obligations under that agreement.

35. Hercules was never asked to, and did not, consent to the transfer to NICO or Resolute of any rights or duties of the AIG Companies under the 2004 Hercules/AIG Agreement, nor under any insurance policies that are subject to the 2004 Hercules/AIG Agreement. Accordingly, there has not been an effective assignment of such rights or duties to NICO or to Resolute. Nonetheless, Resolute, acting under the direction of NICO, has been controlling the exercise of rights and duties of the AIG Companies under the 2004 Hercules/AIG Agreement and/or the underlying AIG Companies' policies, and Resolute is now directly interfering with the AIG Companies' satisfaction of their obligations under that agreement.

36. NICO and Resolute are not parties to the 1998 Ashland/Lloyd's Agreement, the 2003 Ashland/AIG Agreement, or the 2004 Hercules/AIG Agreement, and neither Ashland nor Hercules has consented to the exercise of rights or duties by NICO and Resolute under these agreements. Accordingly, the actions being taken by Resolute and/or NICO to cause Lloyd's Underwriters and the AIG Companies to breach their obligations to Ashland and Hercules under these agreements, which actions ostensibly are being taken on behalf of Lloyd's Underwriters with respect to the 1998 Ashland/Lloyd's Agreement and on behalf of the AIG Companies with respect to the 2003 Ashland/AIG Agreement and the 2004 Hercules/AIG Agreement, are unauthorized, improper and without any privilege to act.

37. The unauthorized actions by Defendants to prevent Lloyd's Underwriters and the AIG Companies from making coverage payments due to Ashland and to prevent the AIG

Companies from making coverage payments due to Ashland and Hercules constitute tortious interference with the contractual relations of Ashland and Hercules.

NICO Profits By Causing The Delay or Denial of Payments to Policyholders

38. Berkshire Hathaway has developed a business scheme, through use of its subsidiary NICO, that has generated billions of dollars of profits under “retroactive reinsurance” arrangements like the ones entered into with Lloyd’s Underwriters and the AIG Companies. Under these arrangements, NICO has improperly interjected itself, and continues to do so, into the contractual dealings between insurers and their policyholders, and resultingly earns substantial profits, through the combination of: (i) taking possession of the insurers’ monies set aside as reserves for policyholder claims payments; and (ii) taking control of the insurers’ claims-handling functions and using that control to direct how claims payments will be made to policyholders. Indeed, NICO and its sister company Resolute use their control over insurers’ claims-handling decisions to induce insurers to delay and deny claims payments that the insurers would otherwise have made to their policyholders. This slowdown of the flow of claims-payment dollars to policyholders frees up substantial funds for NICO and Berkshire Hathaway to invest for their own profit-making purposes. NICO has entered into these arrangements with numerous insurers whereby it receives the cash reserves that an insurer has set aside to provide coverage for a particular portfolio of policyholder claims and, in return, purportedly agrees to fund the coverage obligations of that insurer as they come due, up to a specified monetary limit.

39. Note 23 of NICO’s 2011 Annual Statement discloses the existence of retroactive reinsurance agreements with 32 non-Berkshire insurance entities, representing an unprecedented concentration of insurance risk at Berkshire. Under these retroactive reinsurance arrangements, NICO (and Berkshire Hathaway) profit very handsomely because of their ability to manipulate

the timing of claims payments and their ability to generate significant investment returns from investing the corresponding claims reserves. As described below, retroactive reinsurance contracts provide in excess of \$70 billion of free funding (known as “float”) to Berkshire Hathaway.

40. The economics of NICO’s retroactive reinsurance agreements, in general terms, is no more complicated than an ordinary cash flow analysis. There are four basic elements that determine the profitability of such transactions:

- (a) The amount of premium that is paid by the ceding company to NICO (typically the amount of the claims reserves maintained by the ceding company), which becomes free “float” to Berkshire Hathaway, and is invested in Berkshire’s ongoing businesses;
- (b) The monetary limits on the retroactive reinsurance contract, which comprise the maximum obligation of NICO to the ceding insurer’s policyholders;
- (c) The investment return that Berkshire Hathaway earns on its investment of the premium; and
- (d) The timing of claim payments by NICO to the ceding insurer’s policyholders (i.e. the speed with which the monetary limit of the reinsurance contract is paid out).

The amount of premium and reinsurance limits are, of course, fixed at the time of the transaction’s inception. The amount of money that Berkshire Hathaway earns on the transactions thereafter is a function of the investment return on the premium payment and the timing of making claim payments to policyholders. Over the past 20 years, Berkshire Hathaway has, on average, made returns on investments of over 15% per year (measured as a percentage change in per-share book value) -- far more than an ordinary insurance company can earn on its conservative investment portfolio. The longer that NICO can hold on to the premium dollars

paid under the retroactive reinsurance contract, the more opportunity that Berkshire Hathaway has to make those superior returns on the investment of the premium, and the more profit it earns. Thus, there is an exceptionally strong economic incentive for NICO to take actions to delay or deny the payment of policyholder claims covered by the retroactive reinsurance contracts for as long as possible so that it can hold on to, and invest, more money. This is exactly what has occurred in this case.

41. In short, NICO (and Berkshire Hathaway) makes significant income on these retroactive reinsurance arrangements by taking cash reserves set aside to pay policyholder claims and using that money for investment purposes, while at the same time taking actions to reduce, delay and deny valid claims payments that otherwise would be made to policyholders. NICO uses this business strategy to unfairly profit on its retroactive reinsurance agreements with Lloyd's Underwriters and the AIG Companies by directing that policyholders be paid for coverage claims at less than their full value, while investing the extra cash on hand -- namely, the "float," which Berkshire Hathaway's Chairman, Warren Buffett, calls "free money" -- for the benefit of Berkshire Hathaway's shareholders, at the expense of policyholders seeking payment of their coverage claims.

42. Mr. Buffett explained this "collect-now, pay-later model" in his 2011 Letter to the Shareholders of Berkshire Hathaway, as follows:

Our insurance operations continued their delivery of costless capital that funds a myriad of other opportunities. This business produces "float" -- money that doesn't belong to us, but that we get to invest for Berkshire's benefit. And if we pay out less in losses and expenses than we receive in premiums, we additionally earn an underwriting profit, meaning the float costs us less than nothing. (Emphasis added).

43. In his 2011 Letter to Shareholders, Mr. Buffet further explained the importance of Berkshire Hathaway's business model of retaining cash intended for payment of policyholder claims and using that cash for investment purposes to enrich the shareholders of Berkshire Hathaway:

Let's look first at insurance, Berkshire's core operation and the engine that has propelled our expansion over the years.

Property-casualty ("P/C") insurers receive premiums upfront and pay claims later. In extreme cases, such as those arising from certain workers' compensation accidents, payments can stretch over decades. **This collect-now, pay-later model leaves us holding large sums -- money we call "float" -- that will eventually go to others. Meanwhile, we get to invest this float for Berkshire's benefit.** Though individual policies and claims come and go, the amount of float we hold remains remarkably stable in relation to premium volume. Consequently, as our business grows, so does our float. And how we have grown, as the following table shows:

| <u>Year</u> | <u>Float (in \$ millions)</u> |
|-------------|-------------------------------|
| 1970 | \$ 39 |
| 1980 | 237 |
| 1990 | 1,632 |
| 2000 | 27,871 |
| 2010 | 65,832 |
| 2011 | 70,571 |

It's unlikely that our float will grow much -- if at all -- from its current level. That's mainly because we already have an outsized amount relative to our premium volume. Were there to be a *decline* in float, I will add, it would almost certainly be *very* gradual and therefore impose no unusual demand for funds on us.

* * *

As noted in the first section of this report, we have now operated at an underwriting profit for nine consecutive years, our gain for the period having totaled \$17 billion. I believe it likely that we will continue to underwrite profitably in most -- though certainly not all -- future years. If we accomplish that, our float will be better than cost-free. *We will profit just as we would if some party deposited*

\$70.6 billion with us, paid us a fee for holding its money and then let us invest its funds for our own benefit. (Emphasis added)

* * *

44. Mr. Buffet has acknowledged that Berkshire Hathaway's reinsurance business does not operate like a traditional property/casualty reinsurance company that takes in premiums to assume a risk of loss and then pays out claims in the case of a future loss event.

Let me emphasize once again that cost-free float is *not* an outcome to be expected for the P/C industry as a whole: We don't think there is much "Berkshire-quality" float existing in the insurance world. In most years, including 2011, the industry's premiums have been inadequate to cover claims plus expenses. Consequently, the industry's overall return on tangible equity has for many decades fallen far short of the average return realized by American industry, a sorry performance almost certain to continue.

In short, the Berkshire Hathaway "retroactive reinsurance" business is not a real insurance business at all, but rather a business model that is based on the strategy of obtaining and holding on to policyholders' money as long as possible – longer than it has any right to do.

45. Mr. Buffet then praised the skill and expertise of his "guru" in charge of Berkshire's Reinsurance group, Ajit Jain, who has masterminded these "retroactive reinsurance" deals with insurers such as Lloyd's Underwriters and the AIG Companies that have proved to be so profitable for Berkshire:

Berkshire's outstanding economics exist only because we have some terrific managers running some extraordinary insurance operations. Let me tell you about the major units.

* * *

First by float size is the Berkshire Hathaway Reinsurance Group, run by Ajit Jain. Ajit insures risks that no one else has the desire or the capital to take on. His operation combines capacity, speed, decisiveness and, most importantly, brains in a manner that is unique in the insurance business. Yet he never exposes Berkshire to risks that are inappropriate in relation to our resources. Indeed,

we are *far* more conservative in that respect than most large insurers. For example, if the insurance industry should experience a \$250 billion loss from some mega-catastrophe -- a loss about triple anything it has ever faced -- Berkshire as a whole would likely record a moderate profit for the year because of its many streams of earnings. Concurrently, all other major insurers and reinsurers would be far in the red, and some would face insolvency.

From a standing start in 1985, Ajit has created an insurance business with float of \$34 billion and significant underwriting profits, a feat that no CEO of any other insurer has come close to matching. By these accomplishments, he has added a great many billions of dollars to the value of Berkshire. Charlie would gladly trade me for a second Ajit. Alas, there is none.

46. Under Berkshire Hathaway's retroactive reinsurance scheme, "float" exists and continues to grow because NICO is able to retain and invest money held by insurers that otherwise should have been paid to policyholders for coverage claims. Consequently, NICO's "collect-now, pay-later model" relies upon delaying, reducing, and denying claims payments due to policyholders under the insurance policies and insurance agreements that NICO has agreed to "retroactively reinsure." Of course, NICO has no contractual relationship with the policyholders that are being victimized by this scheme. Rather, NICO is an interloper to the insurance contracts between policyholders and their insurers, and NICO uses its dominance and control over those insurers to induce breaches of contract to the significant financial detriment of policyholders.

47. Indeed, because NICO values "float" so greatly, and "float" depends upon delaying, reducing, and denying claims payments to policyholders, NICO often refuses to let an insurer with which it has entered into a "retroactive reinsurance" arrangement continue to make decisions regarding the handling and payment of policyholder claims. Instead, NICO typically insists on controlling and directing the claims payments made by these "reinsured" insurers, and

insurers, such as Lloyd's Underwriters or the AIG Companies. Rather, Resolute is the entity that NICO, the "retroactive reinsurer," imposes upon the "reinsured" insurers for directing those insurers as to whether, when and in what amount claims payments may be made to policyholders.

51. Resolute is not the agent of Lloyd's Underwriters or the AIG Companies with regard to the handling and payment of policyholder claims that are the subject of the retroactive reinsurance agreements, such as claims made under the 1998 Ashland/Lloyd's Agreement or the 2003 Ashland/AIG Agreement or the 2004 Hercules/AIG Agreement.

52. Resolute does not take direction from Lloyd's Underwriters or the AIG Companies with regard to the handling and payment of policyholder claims that are the subject of the retroactive reinsurance agreements, such as claims made under the 1998 Ashland/Lloyd's Agreement or the 2003 Ashland/AIG Agreement or the 2004 Hercules/AIG Agreement.

53. Instead, Resolute is the agent of, and takes instructions from, NICO. Resolute works for NICO's benefit -- not for the benefit of Lloyd's Underwriters or the AIG Companies -- by directing Lloyd's Underwriters and the AIG Companies to withhold, reduce and delay payment of policyholder claims so as to generate profits for the Berkshire Hathaway corporate enterprise, regardless of whether such directions cause Lloyd's Underwriters and the AIG Companies to breach their insurance contracts and agreements with policyholders.

NICO's and Resolute's Tortious Interference with the 2003 Ashland/AIG Agreement

54. After NICO consummated its transaction with the AIG Companies, NICO and Resolute began improperly interfering with the AIG Companies' contractual relationship with Ashland under the 2003 Ashland/AIG Agreement by wrongfully causing the AIG Companies not

to reimburse Ashland for certain payments made to asbestos claimants, in contravention of the 2003 Ashland/AIG Agreement.

55. NICO, through its agent Resolute, has interjected itself into the claims-handling process under the 2003 Ashland/AIG Agreement without any right or privilege to do so and has dramatically and maliciously altered the course of dealings between the parties under the 2003 Ashland/AIG Agreement in an effort to increase NICO's (and Berkshire Hathaway's) profits. Specifically, Defendants have improperly caused the AIG Companies to cease making certain coverage payments to Ashland that are due and owing under the 2003 Ashland/AIG Agreement.

56. NICO, through its agent Resolute, has caused the AIG Companies to breach the 2003 Ashland/AIG Agreement by asserting frivolous new coverage positions that are contrary to both the terms of the 2003 Ashland/AIG Agreement and contrary to the coverage positions that the AIG Companies had taken prior to the interference by NICO and Resolute. For example, NICO and Resolute are now directing the AIG Companies to assert a position on the number-of-occurrences issue that is contrary to the position that the AIG Companies had agreed to expressly under the 2003 Ashland/AIG Agreement, with the result that the AIG Companies are now not providing coverage under certain of their policies, even though they previously had been providing such coverage.

57. NICO, through its agent Resolute, has caused the AIG Companies to renege on the terms of the 2003 Ashland/AIG Agreement by asserting positions on the amount of policy limits that are squarely contrary to the terms of that agreement, and squarely contrary to the parties' prior course of dealings. Incredibly, Resolute has now caused the AIG Companies to take the position that millions of dollars that they had previously paid to Ashland under the 2003

Ashland/AIG Agreement were a mistake, and thus Ashland should return those monies to the AIG Companies.

58. NICO, through its agent Resolute, has attempted to exercise the AIG Companies' right to audit and to object to Ashland's billings under the 2003 Ashland/AIG Agreement, even though Ashland never consented to Resolute's handling of claims under the 2003 Ashland/AIG Agreement.

59. NICO, through its agent Resolute, has caused the AIG Companies to breach the 2003 Ashland/AIG Agreement by asserting objections to Ashland's billings to the AIG Companies many years after the 30-day deadline to object under the 2003 Ashland/AIG Agreement had long since expired.

60. NICO, through its agent Resolute, has caused the AIG Companies to breach the 2003 Ashland/AIG Agreement by asserting meritless objections to, and unilaterally taking unfounded deductions from, Ashland's indemnity billings based upon the results of an out-dated audit of Riley Stoker claims files that was several years old and that was never intended to allow the AIG Companies, or any other entity, to take retroactive deductions from quarterly billings.

61. NICO, through its agent Resolute, has caused the AIG Companies to breach the 2003 Ashland/AIG Agreement by using a prior audit of Riley Stoker defense costs that was conducted for another insurer as a basis for taking retroactive deductions against Ashland's billings to the AIG Companies for Riley Stoker defense costs – again without permission from Ashland to use this audit for such purpose. Moreover, the deductions are unilateral and arbitrary, and they reflect the auditor's inaccurate interpretation of Ashland's outside counsel billing guidelines. Ashland has explained to the AIG Companies and Resolute that the auditor has misinterpreted those guidelines. Resolute has ignored this explanation and has sought to use the

audit for the improper purpose of justifying a reduction in coverage payments by the AIG Companies.

62. As a result of the tortious interference by NICO and Resolute, the AIG Companies have abruptly halted their payments to Ashland under the 2003 Ashland/AIG Agreement, in clear breach of the AIG Companies' contractual obligations.

63. Accordingly, NICO and Resolute, with which Ashland never had agreed to do business, have now dramatically and maliciously reduced the benefits to Ashland of the 2003 Ashland/AIG Agreement.

NICO's and Resolute's Interference with the 1998 Ashland/Lloyd's Agreement

64. NICO and Resolute have also tortiously interfered with the 1998 Ashland/Lloyd's Agreement by causing Lloyd's Underwriters to pay a decreased portion of their required payments under the 1998 Ashland/Lloyd's Agreement. For example, as a result of this interference, in 2012, Lloyd's Underwriters, under the direction and control of Resolute, have paid Ashland millions of dollars less than they owe under the agreement.

65. NICO, through its agent Resolute, has also caused Lloyd's Underwriters to assert frivolous new objections to Ashland's quarterly billings that were never made by Lloyd's Underwriters previously. For example, NICO and Resolute have caused Lloyd's Underwriters to cease making payments regarding billings to certain Lloyd's policies in the 1979-81 period, even though Lloyd's Underwriters previously had been paying billings to those policies for many years. NICO and Resolute are insisting that this position be asserted against Ashland with little or no regard either for the merits of the position or for the long and well-established course of dealings between the parties.

66. NICO, through its agent Resolute, has caused Lloyd's Underwriters to take patently unreasonable settlement positions with respect to Riley Stoker Asbestos Claims by attempting to assert a veto power over potential claims settlements when no such power is bestowed on Lloyd's Underwriters under the 1998 Ashland/Lloyd's Agreement. Specifically, Resolute, under the direction of NICO, has asserted that Lloyd's Underwriters are not required to pay any portion of any Riley Stoker Asbestos Claim settlement over specified dollar amounts unless Lloyd's Underwriters have given prior approval to that settlement; yet, the 1998 Ashland/Lloyd's Agreement does not give Lloyd's Underwriters such a right to withhold payment for such settlements. Resolute, under the direction of NICO, is causing Lloyd's Underwriters to withhold payments of quarterly invoices based on a clearly erroneous interpretation of the 1998 Ashland/Lloyd's Agreement, and is using that erroneous interpretation as a basis to deprive Ashland of substantial reimbursement payments due under the agreement.

67. Resolute, under the direction of NICO, has caused Lloyd's Underwriters to assert positions refusing to consent to settlements of Riley Stoker Asbestos Claims, which positions are patently unreasonable and demonstrate willful disregard of the applicable law, court procedures, and the realities of asbestos litigation -- particularly in difficult jurisdictions where full discovery is not permitted and the potential for substantial jury verdicts exists.

68. Not only is Resolute, under the direction of NICO, causing Lloyd's Underwriters to breach the 1998 Ashland/Lloyd's Agreement by refusing to pay all current quarterly billings in full, but Resolute, under the direction of NICO, is also causing Lloyd's Underwriters to refuse to pay Ashland millions of dollars of arrearages that have built up in recent years.

69. In addition, NICO and Resolute are causing Lloyd's Underwriters to blatantly defy a prior Arbitrator's award that requires Lloyd's Underwriters to pay Ashland accrued interest on these arrearages.

70. In short, NICO and Resolute, with which Ashland never had agreed to do business, have dramatically and maliciously reduced the benefits to Ashland of the 1998 Ashland/Lloyd's Agreement.

NICO's and Resolute's Interference with the 2004 Hercules/AIG Agreement

71. Resolute, under the direction of NICO, has tortiously interfered with the 2004 Hercules/AIG Agreement by causing the AIG company, National Union, to fail and refuse to make payments of quarterly invoices due and owing to Hercules under that agreement.

72. Resolute, under the direction of NICO, has tortiously induced National Union to refuse demands for payment of interest on outstanding arrearages as are due under the 2004 Hercules/AIG Agreement.

73. As a result of the tortious interference by NICO and Resolute, National Union has failed to pay Hercules hundreds of thousands of dollars owed under the 2004 Hercules/AIG Agreement.

74. Hercules has never agreed to do business with NICO or Resolute with respect to the 2004 Hercules/AIG Agreement, but Hercules is now being subjected to the wrongful business practices of NICO and Resolute to its significant financial detriment.

Damages Suffered by Ashland and Hercules

75. As the result of NICO's and Resolute's tortious interference with contractual relationships, Ashland and Hercules have been severely damaged by the denial of full and timely payment of sums due and owing to Ashland and Hercules under the 2003 Ashland/AIG

Agreement, the 1998 Ashland/Lloyd's Agreement, and the 2004 Hercules/AIG Agreement, and Ashland and Hercules have been deprived of the benefits of those agreements.

76. As the result of NICO's and Resolute's tortious interference, Ashland and Hercules have been required to devote substantial internal resources in attempting to collect sums due under the 2003 Ashland/AIG Agreement, the 1998 Ashland/Lloyd's Agreement, and the 2004 Hercules/AIG Agreement.

77. As the result of NICO's and Resolute's tortious conduct, Ashland and Hercules have been forced to incur significant additional expenses of outside lawyers and consultants to collect sums due under the 2003 Ashland/AIG Agreement, the 1998 Ashland/Lloyd's Agreement, and the 2004 Hercules/AIG Agreement.

78. Moreover, as the result of NICO's and Resolute's tortious interference with the 2003 Ashland/AIG Agreement, the 1998 Ashland/Lloyd's Agreement, and the 2004 Hercules/AIG Agreement, Ashland and Hercules have incurred significant additional expenses for asbestos defense counsel activities in responding to the breaches of those agreements.

Defendants' Pattern of Tortious Interference with Insurance Agreements

79. Upon information and belief, NICO and Resolute have engaged in a pattern of tortiously interfering with the contractual insurance relationships between the ceding insurers that NICO has "retroactively reinsured" and those insurers' policyholders. Some of those policyholders have sued NICO and Resolute seeking damages for such tortious interference and/or for bad faith conduct.

80. Upon information and belief, certain ceding insurers have brought court actions in the United States and in England alleging that NICO had improperly used its claims-handling authority to delay and reduce the payment of policyholder claims to serve NICO's own financial

interests to the detriment of the ceding insurers' interests in prompt resolution of policyholder claims.

81. Upon information and belief, certain policyholders have alleged and proved in legal proceedings that NICO and/or Resolute are engaged in a wrongful effort to interfere with policyholders rights to receive insurance claims payments from ceding insurers that have entered into retroactive reinsurance agreements with NICO.

82. Upon information and belief, many policyholders across the United States have registered vigorous objections and complaints regarding the improper and tortious conduct of NICO and/or Resolute in controlling and directing ceding insurers to reduce, delay and withhold claims payments to policyholders. The number of frequency of such objections and complaints, and the legal proceedings that have ensued therefrom, confirm that such improper and tortious conduct is a deliberate business practice of NICO and Resolute.

CLAIMS FOR RELIEF

Count I: Tortious Interference with Contractual Relations **(2003 Ashland/AIG Agreement)**

83. Plaintiffs allege and incorporate by reference each of the foregoing allegations.

84. Ashland and the AIG Companies are parties to the 2003 Ashland/AIG Agreement.

85. Defendants knew of the 2003 Ashland/AIG Agreement and intended to cause the AIG Companies to breach the 2003 Ashland/AIG Agreement.

86. Defendants' conduct in fact has caused, and continues to cause, the AIG Companies to breach the 2003 Ashland/AIG Agreement, and such breaches have resulted in damages to Ashland in the form of coverage payments not received, loss of use of money, additional legal costs and expenses, and diversion of internal business resources, among others.

87. Ashland did not consent to any purported assignment of claims-handling rights or other duties under the 2003 Ashland/AIG Agreement from the AIG Companies to NICO or Resolute.

88. Defendants have improperly interfered with the AIG Companies' claims-handling decisions under the 2003 Ashland/AIG Agreement without any right, privilege, or justification to do so.

89. Defendants have acted toward Ashland with oppression, fraud, and malice by wrongfully interfering with the AIG Companies' performance of the 2003 Ashland/AIG Agreement, to the detriment of Ashland.

90. Defendants' oppressive, fraudulent, and malicious actions in causing the AIG Companies to reduce, delay, and deny payment of Ashland's claims are motivated solely by Defendants' own financial gain, and these actions are aimed at destroying Ashland's rights under the 2003 Ashland/AIG Agreement to the detriment of Ashland. Defendants' actions are intended to impose an unjust hardship on Ashland, with flagrant indifference to Ashland's rights, by intentionally misrepresenting the coverage defenses that Defendants have advanced as being based on legitimate grounds when in fact they are based on the primary purpose of advancing Defendants' financial interests without regard to the interests and rights of Ashland.

Count II: Tortious Interference with Contractual Relations
(1998 Ashland/Lloyd's Agreement)

91. Plaintiffs allege and incorporate by reference each of the foregoing allegations.

92. Ashland and Lloyd's Underwriters are parties to the 1998 Ashland/Lloyd's Agreement.

93. Defendants knew of the 1998 Ashland/Lloyd's Agreement and intended to cause Lloyd's Underwriters to breach the 1998 Ashland/Lloyd's Agreement.

94. Defendants' conduct in fact has caused and continues to cause Lloyd's Underwriters to breach the 1998 Ashland/Lloyd's Agreement, and such breaches have resulted in damages to Ashland in the form of coverage payments not received, loss of use of money, additional legal costs and expenses, and diversion of internal business resources, among others.

95. Ashland did not consent to any purported assignment of claims-handling rights or other rights under the 1998 Ashland/Lloyd's Agreement from Lloyd's Underwriters to NICO or Resolute.

96. Defendants have wrongfully interfered with Lloyd's Underwriters' claims-handling decisions under the 1998 Ashland/Lloyd's Agreement, without any right, privilege, or justification to do so.

97. Defendants have acted toward Ashland with oppression, fraud, and malice by improperly interfering with Lloyd's Underwriters' performance of the 1998 Ashland/Lloyd's Agreement, to the detriment of Ashland.

98. Defendants' oppressive, fraudulent, and malicious actions in causing Lloyd's Underwriters to reduce, delay, and deny payment of Ashland's claims are motivated solely by Defendants' own financial gain, and these actions are aimed at destroying Ashland's rights under the 1998 Ashland/Lloyd's Agreement to the detriment of Ashland. Defendants' actions are intended to impose an unjust hardship on Ashland, with flagrant indifference to Ashland's rights, by intentionally misrepresenting the coverage defenses that Defendants have advanced as being based on legitimate grounds when in fact they are based on the primary purpose of advancing Defendants' financial interests without regard to the interests and rights of Ashland.

Count III: Tortious Interference with Contractual Relations
(2004 Hercules/AIG Agreement)

99. Plaintiffs allege and incorporate by reference each of the foregoing allegations.

100. Hercules and the AIG Companies are parties to the 2004 Hercules/AIG Agreement.

101. Defendants knew of the 2004 Hercules/AIG Agreement and intended to cause the AIG Companies to breach the 2004 Hercules/AIG Agreement.

102. Defendants' conduct in fact has caused and continues to cause the AIG Companies to breach the 2004 Hercules/AIG Agreement, and such breaches have resulted in damages to Hercules in the form of coverage payments not received, loss of use of money, additional legal costs and expenses, and diversion of internal business resources, among others.

103. Hercules did not consent to any purported assignment of claims-handling rights or other rights under the 2004 Hercules/AIG Agreement from the AIG Companies to NICO or Resolute.

104. Defendants have wrongfully interfered with the AIG Companies' claims-handling decisions under the 2004 Hercules/AIG Agreement, without any right, privilege, or justification to do so.

105. Defendants have acted toward Hercules with oppression, fraud, and malice by improperly interfering with the AIG Companies' performance of the 2004 Hercules/AIG Agreement to the detriment of Ashland.

106. Defendants' oppressive, fraudulent, and malicious actions in causing the AIG Companies to reduce, delay, and deny payment of Hercules' claims are motivated solely by Defendants' own financial gain, and these actions are aimed at destroying Hercules' rights under the 2004 Hercules/AIG Agreement to the detriment of Hercules. Defendants' actions are intended to impose an unjust hardship on Hercules, with flagrant indifference to Hercules' rights, by intentionally misrepresenting the bases for the failures of payments under that agreement

when such failures of payment are motivated by the primary purpose of advancing Defendants' financial interests without regard to the interests and rights of Hercules.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request:

- A. A trial by jury;
- B. That the Court enters judgment in their favor as to each Count of their Complaint;
- C. An award of compensatory, consequential, and punitive damages in an amount in excess of the minimum jurisdictional requirements of the Court, to be determined at trial;
- D. Any and all costs and fees to which Plaintiffs are entitled, including reasonable attorneys' fees and pre-judgment and post-judgment interest; and
- E. Any and all other relief that this Court may deem just and proper.

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Counsel for Plaintiffs

Dated: October 12, 2012

Commonwealth of Kentucky
Fayette County
Wilma F. Lynch
Circuit Court Clerk

Receipt Number: 05-0063536-A

DATE: 10/12/2012

TIME: 12:02 PM

*** (12) CIRCUIT CIVIL - FILING/JURY ***

CASE NO: 12-CI-04638

RECEIVED FROM: DINSMORE & SHOHL

ACCOUNT OF: ASHLAND INC

| | |
|---------------------------------|--------|
| 1. Civil Filing Fee (Q) | 115.00 |
| 2. ATJ Fee (I) | 20.00 |
| 3. Court Technology MCFO(K(CT)) | 10.00 |
| 4. Att Tax Fee MCFO(K(Q)) | 5.00 |
| 5. Court Facilities Fee (J) | 25.00 |
| 6. Library Fee (L) | 1.00 |
| 7. Jury Demand /12 CS(W(M)) | 60.00 |

TOTAL: \$236.00

CHECK: \$236.00

***DIFF: 0.00

*** Check Number: 14029

Prepared By: Wilma Lynch/dme

** MCFO=Money Collected for Others

** CS=Charge for Services

Payer

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KENTUCKY COURT OF JUSTICE